No. [illegible]

In the Supreme Court of the United States

October Term, 1939

ALICE E. LEWIS AND WILLIAM LLOYD LEWIS,
Petitioners,
versus
UNITED STATES OF AMERICA, Respondent.

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit and Brief in Support Thereof.

S. L. DAVIDSON,
W. L. WILLIAMS,
FRED S. RISLEY,
Counsel for Petitioners.

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IN THE SUPREME COURT OF THE UNITED STATES.
October Term, 1927.

No. .....

ALLIE E. LEWIS AND WILLIAM LLOYD LEWIS,
Petitioners,
vs.
UNITED STATES OF AMERICA, *Defendant.*

PETITION FOR WRIT OF *CERTIORARI*.

The petitioners, Allie E. Lewis and William Lloyd Lewis, within the time allowed by law, bring this their petition for *certiorari* and respectfully show to this honorable court:

Summary Statement of the Matter Involved.

The petitioners were indicted on June 23, 1925, in the United States Court for the new Eastern District of Oklahoma by a grand jury drawn and impaneled exclusively from the territory embraced within said new Eastern District and charged in forty counts with violating the National Banking laws in Tulsa County, Oklahoma, in the year 1923. The first thirty-seven counts charge the making of

false entries in a certain minute book of the Liberty National Bank of Tulsa, Oklahoma, and the last three counts charge the making of false entries in three certain separate reports of said bank to the comptroller of the currency showing the financial condition of the bank as of certain dates (R. 1). At the time the offenses were committed, Oklahoma was divided into two federal court districts, known as the Eastern and Western Districts of Oklahoma, with Tulsa County included in the Eastern District, but at the time the indictment was returned, the state had been divided into three new and independent districts, designated as the Northern, Eastern and Western Districts, by the Act of Congress approved February 16, 1925 (43 Stat. 945). The newly created Northern District comprises ten counties which were formerly a part of the old Eastern District and two counties which were formerly a part of the old Western District. The newly created Eastern District comprises the remaining counties of the old Eastern District and the newly created Western District comprises the remaining counties of the old Western District. Under this act, Tulsa County was included in the Northern District. The indictment was returned in the court for the new Eastern District sitting at Muskogee, Oklahoma, on June 23, 1925, charging offenses committed in Tulsa County long prior to the passage and approval of the Act of February 16, 1925. A copy of said act may be found in the appendix hereto under the heading "A."

On July 23, 1924, and prior thereto, the court of the old Eastern District had two judges, the Hon. R. L. Wil-

IAMS, Senior Judge, and the Hon. FRANKLIN E. KENNAMER, Junior Judge. Upon their failure to agree upon the division of business and the assignment of cases for trial in their district, the Senior Circuit Judge of the Circuit, the Hon. WALTER H. SANBORN, made an order on July 23, 1924, dividing the district into two divisions and providing for the division of business and the assignment of cases for trial in the district. This order placed Tulsa County in the second division, declared the judicial business arising therefrom tributary to the court at the City of Tulsa and assigned such business exclusively for trial at Tulsa before the Honorable F. E. KENNAMER. A copy of this order is shown in the record on page 87 and also in the appendix hereto under the heading "B."

Section 2 of the Act of February 16, 1925, assigned Judge WILLIAMS to the new Eastern District and Judge KENNAMER to the Northern District and conferred upon them the same jurisdiction and powers within their respective new districts as they exercised and performed within their respective old districts prior to the passage of the act, and section 5 of the act provides that the jurisdiction and authority of the courts and officers of the old Eastern District as theretofore divided between them by the order of the Senior Judge of the Circuit Court of Appeals, over the territory embraced within the Northern District, should continue as theretofore until the organization of the District Court of said Northern District, but that such jurisdiction and authority should thereupon cease and determine, save and except insofar as the authority of Judge KENNAMER was continued in him as Judge of the Northern

District and save and except as to the authority expressly conferred by law on said courts, judges and officers or any of them, to commence and proceed with the prosecution of crimes and offenses committed therein prior to the establishment of said Northern District, and save and except as to any other authority expressly reserved to them, or any of them, under any law applicable in the case of the creation or change of the divisions or districts of District Courts of the United States. (Compiled Statutes, section 1088-D.) This Act of Congress took effect on the day of its approval, February 16, 1925, and the District Court for the Northern District of Oklahoma was organized April 1st, 1925.

The petitioners attacked the indictment by motion to quash and dismiss, upon the ground (among others), that the court of the new Eastern District did not have jurisdiction to indict for the offenses charged (R. 76 to 84). They also moved to dismiss the cause in the new Eastern District on the ground that the court thereof had no jurisdiction to try the case (R. 70). These motions were overruled (R. 52-53) by Judge Kennamer at Muskogee, Oklahoma, on July 20, 1925, at a special term of the court for the new Eastern District called by him at Muskogee, Oklahoma, on the 16th day of July, 1925, under an assignment made by Judge Kimbrough Stone as acting Senior Judge of the Circuit Court of Appeals on the 29th day of June, 1925 (R. 86). Exceptions were taken and allowed. The petitioners also attacked each count of the indictment by demurrer (R. 51), the first thirty-seven counts, on the ground (among others) that the alleged false statements made in

the minute book of the bank were not "entries" within the meaning of that word as used in section 5209 of the Revised Statutes, and that the "minute" book of the bank was not a "book" of the bank within the meaning of that word as used in section 5209, Revised Statutes, and they attacked each of the last three counts by demurrer on other grounds. The demurrers were overruled by Judge KENNAMER at the same time and place and at the same term of court that he overruled the motions (R. 53). Exceptions were saved and allowed.

The petitioners were thereafter tried on this indictment in the court for the new Eastern District at Ardmore, Oklahoma, in January, 1926, and were convicted on all of the counts of the indictment except the twenty-first, thirty-first, thirty-fifth and thirty-seventh. Upon the first count of the indictment, each petitioner was sentenced to pay a fine of $5,000.00 and costs of prosecution and to be imprisoned in the United States penitentiary at Leavenworth, Kansas, for a term of five years, and on each of the remaining counts, were sentenced to be imprisoned for five years, the sentence on the last thirty-five counts of said indictment to run concurrently with each other and with the sentence imposed on count 1 (R. 65). The objection to the jurisdiction of the court to indict and try the petitioners and the sufficiency of each count as against the demurrer interposed, as well as the sufficiency of the evidence to sustain the conviction, was raised by the petitioners by motion for a directed verdict at the close of the Government's evidence in chief (R. 451 and 500), and again at the

close of all of the evidence (R. 797) and again by motion in arrest of judgment (R. 836), all of which were overruled and denied, and exceptions saved and allowed. Petitioners prosecuted an appeal by writ of error to the Circuit Court of Appeals for the Eighth Circuit, where the case was affirmed on the 28th day of November, 1927, and a petition for rehearing having been filed in due time, the same was denied by that court on May 7, 1928.

Reasons Relied on for Allowance of the Writ.

1. The Circuit Court of Appeals has decided in this case that a defendant may be indicted and tried in a United States Court of a district which had not been created at the time the offense was committed and which did not have jurisdiction over the place where the crime was committed at the time the indictment was returned or at the time the trial was had. This is an important federal question involving the proper construction of the Sixth Amendment to the Constitution of the United States, sections 24 and 59 of the Judicial Code and the Act of Congress of February 16, 1925, and was decided in a way in conflict with the applicable decisions of this court. (*United States* v. *Dawson*, 15 Howard 468, 14 L. ed. 775; *Cook* v. *United States*, 138 U. S. 157, 34 L. ed. 906; *United States* v. *Jackalow*, 66 U. S. 485, 17 L. ed. 225; *Gut* v. *State of Minnesota*, 76 U. S. 35, 19 L. ed. 573; *Salinger* v. *Loisel*, 265 U. S. 224, 68 L. ed. 989; *Todd* v. *United States*, 158 U. S. 278, 39 L. ed. 982; *Railway Company* v. *Ramsey*, 22 Wall.

322, 22 L. ed. 823; *Exporters* v. *Butterworth-Judson Company*, 258 U. S. 365, 66 L. ed. 663; *Graves* v. *Corbin*, 132 U. S. 571, 33 L. ed. 462; *Logan* v. *United States*, 144 U. S. 263, 36 L. ed. 429; *Rosencrans* v. *United States*, 165 U. S. 257, 41 L. ed. 708.)

2. This ruling of the Circuit Court of Appeals in this case is in conflict with a decision of the Fifth Circuit Court of Appeals on the same matter (*Quinlan* v. *United States*, 22 Fed. (2nd Series) 95, decided October 25, 1927, in which a petition for writ of *certiorari* was denied by this court on March 5, 1928), resulting recently in the District Court for the Northern District of Oklahoma discharging, on writ of *habeas corpus*, an accused indicted in the Middle District of Georgia for an offense committed in the Southern District of Georgia before the Act of May 28, 1926, was passed creating the Northern, Middle and Southern Districts of Georgia, on the theory that the decision in *Quinlan* v. *United States, supra*, holding such an indictment valid and legal, was in conflict with the decision of the Circuit Court of Appeals of the Eighth Circuit in the *Lewis* case and that the latter case was binding on the District Courts in that circuit. (*Mizell* v. *Beard, U. S. Marshal*, 25 Fed. (2nd Series) 324.)

3. This ruling of the Circuit Court of Appeals in this case is untenable and in conflict with the great weight of federal district and circuit court decisions. (*United States* v. *Maxon*, 5 Blatchford 360, 26 Fed. Cases 1220, case No. 15748; *United States* v. *Hackett*, 29 Fed. 848; *United States* v. *Benson*, 31 Fed. 896; *United States* v. *Greene*, 146 Fed. 776; *United States* v. *Wood*, 28 Fed. Cas. 755, case No

16755; *United States* v. *Hill*, 26 Fed. Cas. 315, case No. 15364; *Case* v. *United States*, 14 Fed. (2d) 510.)

4. This ruling of the Circuit Court of Appeals in this case has so far sanctioned such a departure from the accepted and usual course of judicial proceedings by the District Court of the new Eastern District of Oklahoma as to call for an exercise of this court's power of supervision.

5. The Circuit Court of Appeals in this case has held that the petitioners can be legally tried in the court of the new Eastern District at Ardmore, Oklahoma, although the division order of Judge Saxbourn jurisdictionally fixed the place of trial at Tulsa, Oklahoma, in the court of the Second Division of the old Eastern District. This ruling is in conflict with a prior decision of said court. (*Case* v. *United States*, 14 Fed. (2d) 510.)

6. The Circuit Court of Appeals in this case has held that the minute book of a bank is a "book" and the minutes of board meetings are "entries" within the meaning of those words as used in section 5209 of the Revised Statutes, prohibiting the making of false entries in books of national banking associations. This is an important question of federal law which has not been, but should be, settled by this court. It involves the proper construction of the meaning of the word "entry" and the word "book" as used in section 5209 of the Revised Statutes. This is the first and only case to be found in the Federal Reports construing the meaning of these words in a case where the false entry was charged to have been made in the minute book of a bank, although these words have been construed in sev-

eral federal cases where the false entry was charged to have been made in a book of account to mean, the word "entry"—an "item of account" and the word "book," a "book of account." (*United States* v. *Crecilius*, 34 Fed. 30; *United States* v. *Morse*, 161 Fed. 429; *United States* v. *Herrig*, 204 Fed. 124.)

7. This ruling of the Circuit Court of Appeals in this case is in conflict with the settled construction by the executive and judicial departments of the United States Government since 1864—a span of sixty-four years—that this statute does not cover the making of false minutes in the minute book of a bank.

8. The decision of the Circuit Court of Appeals in this case, in effect, holds that the wilfull misapplication of the funds of a national bank by an officer thereof, which results in the making of false entries in reports to the comptroller of the currency by other employees of the bank, without any direction to do so from the officer guilty of such misapplication, renders such officer guilty of making such false entires. This is an important federal question decided in a way in conflict with the applicable decisions of this court. (*Cochran* v. *United States*, 157 U. S. 286, 39 L. ed. 704; *Coffin* v. *United States*, 156 U. S. 432, 39 L. ed. 481.)

9. This ruling of the Circuit Court of Appeals is in conflict with, and contrary to, the weight of federal authority. (*United States* v. *McClarty*, 191 Fed. 523; *United States* v. *Herrig*, 204 Fed. 124; *Cooper* v. *United States*, 13 Fed. (2nd Series) 16; *Twining* v. *United States*, 141 Fed.

41; *United States* v. *Young*, 128 Fed. 111; *Dow* v. *United States*, 82 Fed. 904, 910.)

Wherefore, your petitioners respectfully pray that a writ of *certiorari* be issued out of, and under the seal of this honorable court directed to the United States Circuit Court of Appeals for the Eighth Circuit, commanding that court to certify and to send to this court for its review and determination on a date certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket No. 7492, *Allie E. Lewis and William Lloyd Lewis, Plaintiffs in Error, vs. United States of America, Defendant in Error*, and that said judgment of the said Circuit Court of Appeals may be reversed by this honorable court and that your petitioners may have such other and further relief in the premises as to this honorable court may seem meet and just, and your petitioners will ever pray.

ALLIE E. LEWIS, and
WILLIAM LLOYD LEWIS,

By R. L. DAVIDSON,
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